

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 11312 OF 2018

MEERABAI PITAMBAR SONAWANE

VERSUS

ABA BHAGIRATH ALIAS BHAGWAT KOLI AND OTHERS

...

Advocate for the Petitioner : Smt.Manjushri Shendage-Narwade

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 15th October, 2018

Per Court:

1 This matter was heard on 11.10.2018, 12.10.2018 and again today.

2 The Petitioner is aggrieved by the order dated 10.01.2018 passed by the Trial Court by which, the application Exhibit 37 filed by the Petitioner/ Plaintiff in RCS No.47/2015 seeking amendment, has been rejected.

3 I have heard the learned Advocate for the Petitioner and have gone through the petition paper book. Reliance is placed on the judgments of this Court in the matters of *Mudra Salt and Chemical Industries vs. Collector, Thane and others, 2001 (3) Mh.L.J. 151* and *Dadabhau Shankar Ghodke and others vs. Mohanlal Kanhyalal Agrawal and another, 2003 (1) Mh.L.J. 446*, to contend that the Plaintiff can take

inconsistent stands and can also put forth the claim of adverse possession.

4 It requires no debate that the Plaintiff can take inconsistent pleas in the suit. The Plaintiff, in this case, seeks to raise a plea of adverse possession when the entire suit is based on the ground that the Plaintiff has purchased the suit property in view of the registered sale deed. Therefore, the Plaintiff has prayed for a direction that the Defendants should execute a sale deed in favour of the Plaintiff and they be permanently enjoined from interfering with the peaceful possession of the Plaintiff and her cultivation activities undertaken.

5 It is settled law that when it comes to adopting a plea of adverse possession, the said plea is available only in defence. As is often said that a plea of adverse possession is a shield and is not to be used as a sword.

6 In *Mudra Salt and Chemical Industries (supra)*, the issue before the Court was only with regard to the amendment in the plaint. No doubt, the plaintiff had sought leave to amend the plaint and raise a plea of adverse possession. However, the details in the said judgment reveal that the Defendants had never raised the ground or an issue that the plaintiff cannot adopt a plea of adverse possession. This Court was also not required to deal with that issue. The only issue raised was whether, the amendment could have been allowed at any stage.

7 Similarly, in *Dadabhau Ghodke (supra)*, this Court dealt

with the issue of inconsistent pleas and defences. Two conflicting/ inconsistent pleas may destroy both the pleas, but the litigant cannot be precluded from taking such inconsistent pleas. In *Dadabhau Ghodke (supra)* as well, the issue as to whether, the Plaintiff can take a plea of adverse possession, was not raised for consideration.

8 After hearing this matter at length on 11.10.2018, before commencing the dictation, I had granted an opportunity to the learned Advocate for the Petitioner to cite any specific judgment/ judicial pronouncement, which would indicate that the Plaintiff can raise a plea of adverse possession as a matter of right and can use it as a sword in the litigation initiated by him.

9 Today, the learned Advocate for the Petitioner submits that she has not been able to lay her hands on any such judgment.

10 In view of the above, I do not find that the impugned order dated 10.01.2018 passed by the Trial Court declining the Plaintiff to adopt the plea of adverse possession, could be termed as being perverse or erroneous.

11 This Writ Petition, being devoid of merit is, therefore, dismissed.